Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copes of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–230 Filed 1–4–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–107; Notice 1]

Excalibur Automobile Corp.; Receipt of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, has determined that some of its vehicles fail to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain Type 2, three-point harness active restraint systems.

Excalibur supports its application for inconsequential noncompliance with the following. Excalibur also included a brochure with pictures and a description of the subject vehicles. This brochure is available in the NHTSA docket.

The 59 JAC 427 Cobras that are the subject of this exemption petition all contain Type 2, three-point harness active restraint systems. Automatic restraint systems are required for vehicles produced on or after September 1, 1989. Bringing into compliance with paragraph S4.1.4 of FMVSS 208 the 59 JAC 427 Cobras that are the subject of this exemption petition would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur submits that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 by the 59 JAC Cobras at issue is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

1. The Overall Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use and Small Number

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. . . . The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic) type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100–180 JAC 427 Cobras for sale worldwide, or no more than 15 per month. Of the 100–180, only 60% of the JAC 427 Cobras, or 60–108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only 59 JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

2. The Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Due to Probable Existing Cobra Safety Belt Use and to Excalibur's Proposal To Boost Cobra Safety Belt Use

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. *See generally,* NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as ''Interim Report''). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993.* Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due

to increased safety awareness. *See* Interim Report at viii.

An informal survey of Excalibur automobile owners, including those of the JAC 427 Cobra, revealed that these owners on average are 45-year-old males with greater incomes and higher levels of education than the general population. Unlike youthful segments of the population who are more prone to reckless driving, Excalibur automobile owners are predominantly established, responsible people who value their personal safety and the quality and uniqueness of their investment in an Excalibur automobile. As a result, Excalibur opines that the owners of the JAC 427 Cobras are more likely to be wearing a safety belt while driving than other segments of the population, such as young single males.

To ensure even higher safety belt use in its JAC 427 Cobras, and thereby increase the safety of the driver and passenger, Excalibur proposes reminding in the strongest terms possible both the driver and passenger of the consequences of not using their safety belts. Excalibur would accomplish this by posting a warning label plainly and clearly visible to both the driver and passenger which states as follows:

WARNING: YOU MUST USE THE SEATBELT PROVIDED IN THIS VEHICLE. IT IS THE LAW. FAILURE TO USE THE SEATBELT COULD RESULT IN SERIOUS INJURY OR DEATH SINCE THIS CAR DOES NOT HAVE AN AIRBAG OR AUTOMATIC RESTRAINT SYSTEM.

Such a label should boost safety belt use by the drivers and passengers of the 59 JAC 427 Cobras, making the safety risk inconsequential by comparison to the safety risk associated with automobiles having automatic restraint systems.

Interested persons are invited to submit written data, views, and arguments on the application of Excalibur, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies by submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 6, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Dated: December 28, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–167 Filed 1–4–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–67; Notice 3]

RIN 2127–AE92

Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data; correction.

SUMMARY: This document corrects the final data on thefts of model year 1992 passenger motor vehicles that occurred in calendar year 1992. The corrections are based on information provided by vehicle manufacturers.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On August 8, 1994, NHTSA published the preliminary theft rates for calendar year 1992 passenger motor vehicles in the **Federal Register** (59 FR 40409). The public was asked to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. NHTSA officials took the precaution of contacting individual manufacturers by telephone, asking them to submit in writing any necessary corrections of the preliminary data. Ten manufacturers provided written corrections. Using all written comments to make necessary corrections to the data, NHTSA published on November 29, 1994 (59 FR 61023) the final data on passenger motor vehicle thefts that occurred in calendar year (CY) 1992.

Subsequently, in a letter dated December 7, 1994, Toyota informed this agency that: ''Although we had been given the opportunity to comment on the preliminary theft data . . . we failed to do so.'' With the letter, Toyota provided final production figures, as they were reported to the U.S. Environmental Protection Agency, for 14 model year (MY) 1992 Toyota passenger motor vehicle lines. In addition, Toyota informed the agency that the MY 1992 Toyota Land Cruiser, a multipurpose passenger vehicle, was not subject to coverage under 49 U.S.C. chapter 331 *Theft Prevention* because the Land Cruiser's gross vehicle weight rating exceeded the statutory limitation of not more than 6,000 pounds.

In response to Toyota's letter, NHTSA is making the necessary corrections to the final theft data. NHTSA took into account all of Toyota's corrections. As a result of the adjustments, the Toyota Land Cruiser, previously ranked No. 6 was removed, reducing the number of vehicle lines listed for CY 1992 from 215 to 214. Changes to the remaining 14 Toyota lines were: the Toyota 4-Runner, previously ranked No. 15 with a theft rate of 10.1542, is now ranked No. 16, with a theft ranking of 9.7346; the Toyota Supra, previously ranked No. 60 with a theft rate of 5.5556, is now ranked No. 56 with a theft rate of 5.7937; and the Toyota MR2, previously ranked No. 66, with a theft rate of 5.2381, is now ranked No. 63 with a theft rate of 5.3619.

The Toyota Corolla/Corolla Sport, previously ranked No. 72, with a theft rate of 5.1778, is now ranked No. 74 with a theft rate of 5.0594; the Toyota Cressida, previously ranked No. 87, with a theft rate of 4.4737, is now ranked No. 86 with a theft rate of 4.5057; the Toyota Celica, previously ranked No. 99 with a theft rate of 3.8929, is now ranked No. 142 with a theft rate of 2.3936; the Toyota Paseo, previously ranked No. 107, with a theft rate of 3.7162, is now ranked No. 103, with a theft rate of 3.7430; and the Toyota Tercel, previously ranked No. 121, with a theft rate of 3.1452, is now ranked No. 118, with a theft rate of 3.1411.

The Toyota Camry, previously ranked No. 133 with a theft rate of 2.6462, is now ranked No. 130, with a theft rate of 2.6455; the Toyota Lexus SC, previously ranked 137 with a theft rate of 2.5694, is now ranked No. 135 with a theft rate of 2.5445; the Toyota Lexus LS, previously ranked No. 140, with a theft rate of 2.4390, is now ranked No. 137, with a theft rate of 2.4517; the Toyota Pickup Truck, previously ranked No. 149, with a theft rate of 2.3149, is now ranked No. 141, with a theft rate of 2.4175; the Toyota Lexus ES, previously ranked No. 165, with a theft rate of 1.9067, is now ranked No. 163 with a theft rate of 1.9286; and the Toyota Previa, previously ranked No. 172, with a theft rate of 1.6972, is now ranked No. 171, with a theft rate of 1.6993.

This notice also corrects the final production numbers for the Mazda Navajo. The Mazda Navajo, previously ranked No. 100 with a theft rate of